IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 22442 of 2004

Between:

K. Prasada Rao,Ex-Mukhaddam, E-28437, APSRTC, Zonal Stores, Vidyadharapuram, Vijayawada, R/o D.No. 32-11-32, CSI Church Street, Mogalrajapuram, Vijayawada.

..... PETITIONER

AND

1 The Labour Court, Guntur, Rep. by its Presiding Officer.
2 Vice Chairman & Managing Director, APSRTC, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction, declaring the orders passed by the Labour Court, Guntur in un-numbered M.P.No. /2004 in CFR.No. 2682, dated. 29-9-2004 as illegal, unjust, arbitrary, unsustainable, contrary to the Judgment Reported in 1992(2) ALT 107 and as such liable to be set aside by further directing the 1st respondents to adjudicate the Dispute raised by the petitioner about the claim of his due terminal benefits from the 2nd respondent.

Counsel for the Petitioner: MR.S.M.SUBHAN

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: MR.V.T.M.PRASAD S.C.FOR APSRTC

The Court made the following:

ORDER:

Challenging the orders passed by the labour Court, Guntur in un-numbered M.P.No……/2004 in CFR.No.2682, Dated 29.09.2004 as bad and illegal, the present writ petition is filed.

The petitioner filed an application under Section 33-C(2) of Industrial Disputes Act stating that he is eligible for Casual leaves and earned leaves on par with Class-III employees, but the 1st respondent disallowed the same. Hence, he filed the application to determine the amounts due to the petitioner. That petition was dismissed on the ground that the petitioner was already retired on attaining the age of superannuation, he is not entitled for any relief under Section 33-C(2) of the Industrial Disputes Act. Challenging the same the present writ petition is filed.

Learned Counsel appearing for the petitioner contended that the petitioner is not seeking any monetary benefits subsequent to the retirement benefits, but only the benefits which he is entitled to during the service and therefore the petition is maintainable. For that, he placed reliance on the decision of this Court in **V.Pentayya Vs. The Joint Manager Food Corporation of India** , wherein it was held thus:

> "Therefore, the real test is not one as to whether the claimant is presently or formerly a workman, but the clinching fact is that the claim should relate to the period during which the person was a workman."

Therefore, the issue that has to be decided in the claim petition is whether the claim of the applicant relates to the period during which he worked in the respondents Corporation. Therefore, the said issue has to be determined and decided after adducing necessary evidence before the Industrial Tribunal. So, dismissal of the petition at the threshold is not justified.

Following the said judgment, the writ petition is allowed setting aside the

impugned order of the labour Court and directing the labour Court to number the application and pass appropriate orders.

18.02.2005

MRKR

To

1 The Presiding Officer, Labour Court, Guntur.
2 The Vice Chairman & Managing Director, APSRTC, Hyderabad.

3 Two C.D.copies to the Government Pleader for Labour, High Court Buildings, Hyderabad.

4 Two CD copies.

*Form-NIC-OGS/WP{**AVLR**}*